



DEPARTMENT OF COMMERCE

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No. 220728-0165]**

**RIN 0648-BL43**

**Magnuson-Stevens Fishery Conservation and Management Act Provisions;  
Fisheries of the Northeastern United States; Amendment 22 to the Summer  
Flounder, Scup, and Black Sea Bass Fishery Management Plan**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement Amendment 22 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan. Amendment 22 was developed by the Mid-Atlantic Fishery Management Council to revise summer flounder, scup, and black sea bass commercial and recreational sector allocations. Amendment 22 is intended to ensure that the best available science is used to determine commercial and recreational sector allocations.

**DATES:** Comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** You may submit comments on this document, identified by **NOAA-NMFS-2022-0042**, by the following method:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter **NOAA-NMFS-2022-0042** in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

*Instructions:* Comments sent by any other method, to any other address or individual or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Copies of Amendment 22, including the Environmental Assessment, the Regulatory Impact Review, and the Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared in support of this action are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. The supporting documents are also accessible via the Internet at: [https://www.mafmc.org/s/SFSBSB\\_com\\_rec\\_allocation\\_EA-final\\_6-24-22.pdf](https://www.mafmc.org/s/SFSBSB_com_rec_allocation_EA-final_6-24-22.pdf).

**FOR FURTHER INFORMATION CONTACT:** Emily Keiley, Fishery Policy Analyst, (978) 281-9116.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission) cooperatively manage the summer flounder, scup, and black sea bass fisheries. The Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) outlines the allocation of quota, for each species, between the commercial and recreational fisheries. This joint amendment reevaluates and proposes to revise the commercial and recreational sector allocations in the Summer Flounder, Scup, and Black Sea Bass FMP. This action was initiated in part to address the

allocation-related impacts of the revised recreational catch and landings data provided by the Marine Recreational Information Program (MRIP). Specifically, this amendment considers:

1. Changing the current allocations between the commercial and recreational sectors for summer flounder, scup, and black sea bass;
2. Adding an option to transfer a portion of the allowable landings each year between the commercial and recreational sectors, in either direction, based on the needs of each sector; and
3. Adding the option for future additional changes to the commercial/recreational allocation and transfer provisions to be considered through an FMP addendum/framework action, as opposed to an amendment.

### **Proposed Commercial/Recreational Allocations**

This action proposes to change the commercial and recreational allocations for summer flounder, scup, and black sea bass. The current commercial and recreational allocations for all three species were established in the mid-1990s. The allocations are based on historical proportions of landings (for summer flounder and black sea bass) and catch (for scup) from each sector. The current commercial/recreational allocations, and the years used to determine the allocation percentages (base years) are shown in Table 1.

**Table 1 -- Current commercial/recreational allocations**

<b>Species</b>	<b>Base Years</b>	<b>Data Type</b>	<b>Commercial Allocation Percentage (%)</b>	<b>Recreational Allocation Percentage (%)</b>
<b>Summer Flounder</b>	1980-1989	Commercial and Recreational Landings	60	40
<b>Scup</b>	1988-1992	Commercial and Recreational Catch	78	22
<b>Black Sea Bass</b>	1983-1992	Commercial and Recreational Landings	49	51

In July 2018, MRIP released revised time series of catch and harvest estimates

based on adjustments to its angler intercept methodology, which is used to estimate recreational catch rates, as well as changes to its effort estimation methodology, namely, a transition from a telephone-based effort survey to a mail-based effort survey for the private/rental boat and shore-based fishing modes. These revisions collectively resulted in higher recreational catch estimates compared to previous estimates, affecting the entire time series of data going back to 1981. The revised MRIP estimates were incorporated into the stock assessments for summer flounder in 2018 and for scup and black sea bass in 2019. This impacted the estimated stock biomass and resulting catch limits for these species.

The revised MRIP time series created a mismatch between the data that were used to set the allocations and the data currently used in management for setting catch limits. Changes to commercial catch data have also been made since the allocations were established. The allocation changes proposed in this amendment seek to ensure that the best available data is used to determine commercial and recreational sector allocations.

Amendment 22 includes a range of allocation alternatives, with options that would have maintained the current allocations and a variety of options to revise the allocations based on updated data using the same or modified “base years” (the time periods used to set the current allocations). The Council and Board ultimately voted to revise the allocations using the original base years updated with new data. This approach allows for consideration of fishery characteristics in years prior to influence by the commercial/recreational allocations, while also using the best scientific information available to understand the fisheries in those base years.

For all three species, these changes result in a shift in allocation from the commercial to recreational sector. However, because the summer flounder and black sea bass fisheries will be transitioning from landings-based to catch-based allocations, the current and revised allocations for those species are not directly comparable. The

proposed commercial and recreational sector allocations are shown in Table 2.

**Table 2 -- Proposed commercial/recreational allocations**

<b>Species</b>	<b>Base Years</b>	<b>Data Type</b>	<b>Commercial Allocation Percentage (%)</b>	<b>Recreational Allocation Percentage (%)</b>
<b>Summer Flounder</b>	1980-1989	Commercial and Recreational Catch	55	45
<b>Scup</b>	1988-1992	Commercial and Recreational Catch	65	35
<b>Black Sea Bass</b>	1983-1992	Commercial and Recreational Catch	45	55

The Council and Board considered but did not recommend an option to “phase in” the allocation changes over a period of time. A phase-in period was deemed unnecessary given the relatively small magnitude of allocation changes.

#### **Revised Framework Provisions**

The Council and Board also approved an option to allow future changes to commercial/recreational allocations, annual quota transfers between sectors, and other measures addressed in the amendment to be made through framework actions.

They also considered, but did not recommend, an option to allow transfers of annual quota between the commercial and recreational sectors at this time.

#### **Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the Assistant Administrator has determined that this proposed rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, other provisions of the MSA, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by

section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities, and also determines ways to minimize these impacts. The IRFA incorporates sections of the preamble to this rule and analyses contained in Amendment 22 and its accompanying EA/RIR/IRFA. A copy of the complete analysis is available from the Council (see **ADDRESSES**). A summary of the IRFA follows.

*Description of the Reasons Why Action by the Agency is Being Considered and Statement of the Objectives of, and Legal Basis for, this Proposed Rule*

This action proposes management measures for the commercial and recreational summer flounder, scup and black sea bass fisheries. This action is taken under the authority of the MSA and regulations at 50 CFR part 648. A complete description of the reasons why this action is being considered, and the objectives of and legal basis for this action, are contained in the preamble to this proposed rule and are not repeated here.

*Description and Estimate of the Number of Small Entities to Which this Proposed Rule Would Apply*

The entities (*i.e.*, the small and large businesses) that may be affected by this action include fishing operations with federal moratorium (commercial) permits and/or federal party/charter permits for summer flounder, scup, and/or black sea bass. Private recreational anglers are not considered “entities” under the RFA. For RFA purposes only, NMFS established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (50 CFR 200.2). A business primarily engaged in commercial fishing is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million, for all its affiliated operations worldwide.

Vessel ownership data were used to identify all individuals who own fishing

vessels. Vessels were then grouped according to common owners. The resulting groupings were then treated as entities, or affiliates, for purposes of identifying small and large businesses which may be affected by this action.

Commercial and recreational for-hire affiliates potentially regulated by this action include all those with valid commercial fishery permits for summer flounder, scup and black sea bass and any for-hire affiliates that reported landing summer flounder, scup or black sea bass in any year between 2018-2020, which is the most recent complete calendar year data. A total of 1,522 affiliates were identified as being potentially regulated by this action, 1,513 (99 percent) of which were identified as small businesses and 9 (1 percent) were identified as large businesses based on their average revenues in 2018-2020.

Of the total affiliates potentially regulated by this action, 455 affiliates reported that the majority of their revenues in 2020 came from for-hire fishing. Some of these affiliates may have also participated in commercial fishing. All 455 of these for-hire affiliates were categorized as small businesses based on their average 2018-2020 revenues. It is not possible to determine what proportion of their revenues came from fishing for an individual species. Nevertheless, given the popularity of summer flounder, scup, and black sea bass as recreational species, revenues generated from these species are likely important for many of these affiliates at certain times of the year.

#### *Description of the Projected Reporting, Record-Keeping, and Other Compliance*

##### *Requirements of this Proposed Rule*

There are no proposed reporting, recordkeeping, or other compliance requirements.

##### *Federal Rules Which May Duplicate, Overlap, or Conflict with this Proposed Rule*

The proposed action does not duplicate, overlap, or conflict with other Federal rules.

*Description of Significant Alternatives to the Proposed Action Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact on Small Entities*

The proposed action (*i.e.*, the suite of preferred alternatives) includes implementation of revised commercial/recreational quota allocation system for the summer flounder, scup, and black sea bass fisheries.

When considering the economic impacts of the alternatives under the Regulatory Flexibility Act, consideration should also be given to those non-preferred alternatives which would result in higher net benefits or lower costs to small entities while still achieving the stated objective of the action.

For summer flounder and scup, only the no action alternatives (alternatives 1a-4 and 1b-1, respectively) had greater positive expected impacts for the commercial sector than the preferred alternatives; however, those alternatives had greater negative impacts for the recreational sector than the preferred alternatives. For black sea bass, both the no action alternative (alternative 1c-4) and alternative 1c-5 were expected to have greater positive impacts for the commercial sector than the preferred alternative. However, as with summer flounder and scup, those alternatives had greater negative impacts for the recreational sector than the preferred alternative. In addition, alternative 1c-5 would have maintained a landings-based allocation for black sea bass, and the Council and Board supported switching to a catch-based allocation. Catch-based allocations were supported because they include both landings and discards, eliminate the current discard apportionment process, and hold each sector accountable to their own discards.

All alternatives that had a greater potential for positive impacts or a lesser potential for negative impacts to the recreational sector than the preferred alternatives had a greater magnitude of negative expected impacts for the commercial sector. The no action alternative, for all three species, did not meet the stated objectives given the



notable changes in data that have occurred since these allocations were first established, and that leaving the allocations unchanged would not be based on the best scientific information available.

The non-preferred alternatives for phase-in, transfers, and frameworks/addenda are not expected to have notably different socioeconomic impacts than the preferred alternatives.

### **List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Reporting and recordkeeping requirements.

**Dated:** August 4, 2022.

**Samuel D. Rauch, III,**

*Deputy Assistant Administrator for Regulatory Programs,*

*National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

### **PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES**

1. The authority citation for part 648 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 648.100, revise paragraph (a)(1) to read as follows:

#### **§ 648.100 Summer flounder Annual Catch Limit (ACL).**

(a) \* \* \*

(1) *Sector allocations.* The commercial and recreational fishing sector ACLs will

be established based on the allocations defined in the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP).

\* \* \* \* \*

3. In § 648.110, revise paragraph (a)(1) to read as follows:

**§ 648.110 Summer flounder framework adjustments to management measures**

(a) \* \* \*

(1) *Adjustment process.* The MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting and prior to and at the second MAFMC meeting. The MAFMC's recommendations on adjustments or additions to management measures must come from one or more of the following categories:

Adjustments within existing ABC control rule levels; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; minimum fish size; maximum fish size; gear restrictions; gear requirements or prohibitions; permitting restrictions; recreational possession limit; recreational seasons; closed areas; commercial seasons; commercial trip limits; commercial quota system including commercial quota allocation procedure and possible quota set asides to mitigate bycatch; recreational harvest limit; specification quota setting process; commercial/recreational allocations; transfer provisions between the commercial and recreational sectors; FMP Monitoring Committee composition and process; description and identification of essential fish habitat (and fishing gear management measures that impact EFH); description and identification of habitat areas of particular concern; regional gear restrictions; regional season restrictions (including option to split seasons); restrictions on vessel size (LOA and GRT) or shaft horsepower; operator permits; changes to the SBRM, including the

CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs; any other commercial or recreational management measures; any other management measures currently included in the FMP; and set aside quota for scientific research. Issues that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require an amendment of the FMP instead of a framework adjustment.

\* \* \* \* \*

4. § 648.120, revise paragraph (a)(1) to read as follows:

**§ 648.120 Scup Annual Catch Limit (ACL).**

(a) \* \* \*

(1) *Sector allocations.* The commercial and recreational fishing sector ACLs will be based on the allocations defined in the Summer Flounder, Scup, and Black Sea Bass FMP.

\* \* \* \* \*

5. In § 648.130, revise paragraph (a)(1) to read as follows:

**§ 648.130 Scup framework adjustments to management measures.**

(a) \* \* \*

(1) *Adjustment process.* The MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting and prior to and at the second MAFMC meeting. The MAFMC's recommendations on adjustments or additions to management measures must come from one or more of the following categories:

Adjustments within existing ABC control rules; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; minimum fish size; maximum fish size; gear restrictions; gear restricted areas; gear requirements or prohibitions; permitting restrictions; recreational possession limits; recreational seasons; closed areas; commercial seasons; commercial trip limits; commercial quota system including commercial quota allocation procedure and possible quota set asides to mitigate bycatch; recreational harvest limits; annual specification quota setting process; commercial/recreational allocations; transfer provisions between the commercial and recreational sectors; FMP Monitoring Committee composition and process; description and identification of EFH (and fishing gear management measures that impact EFH); description and identification of habitat areas of particular concern; regional gear restrictions; regional season restrictions (including option to split seasons); restrictions on vessel size (LOA and GRT) or shaft horsepower; operator permits; changes to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs; any other commercial or recreational management measures; any other management measures currently included in the FMP; and set aside quota for scientific research.

\* \* \* \* \*

6. In § 648.140, revise paragraph (a)(1) to read as follows:

**§ 648.140 Black sea bass Annual Catch Limit (ACL).**

(a) \* \* \*

(1) *Sector allocations.* The commercial and recreational fishing sector ACLs will be based on the allocations defined in the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan.

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